

The stipulations of the parties are set forth in the award of the Special Administrative Law Judge and are adopted herein. In addition, the parties stipulated and agreed claimants would be entitled to the following should this claim be found compensable under the Kansas Workers Compensation Act:

- (1) Reimbursement for funeral expense up to the statutory maximum of \$3,200.00.
- (2) Payment of \$1,146.77 for medical expense incurred at St. Francis Regional Medical Center.
- (3) Payment of deposition expense of \$328.10 incurred with Deposition Services and \$592.25 incurred with Cochran, Pudlo, & Kozlowski, Ltd.
- (4) Pursuant to K.S.A. 1987 Supp. 44-510b, payment to Elizabeth A. (Cauley) Fox, as surviving legal spouse of the decedent, of 100 weeks of benefits at the rate of \$128.00 per week because of her remarriage on September 1, 1991.

ISSUES

The Special Administrative Law Judge found the decedent, Joe Allyn Cauley, died as a result of exposure to chemicals while working for respondent, and awarded benefits to the surviving spouse and children. The respondent, insurance carrier, and Workers Compensation Fund request review of that decision. The issue before the Appeals Board is whether decedent's death was caused by accidental injury or occupational disease that arose out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

Claimants have established it is more probably true than not the decedent died as a result of exposure to chemicals and vapors at work. Therefore, the finding of the Special Administrative Law Judge that decedent's surviving spouse and minor children are entitled to benefits under the Workers Compensation Act is affirmed.

Although voluminous, the entire record was reviewed by the Appeals Board. The Appeals Board finds, based upon the testimony of medical experts Thomas Price Houston, M.D., and Jeffrey R. Hammersley, M.D., claimant experienced a toxic exposure to chemicals on February 5, 1988, which, superimposed upon an underlying state of asthma, induced immediate respiratory collapse and caused death. Because the toxic exposure appears to have been of short duration and similar to a sudden, traumatic event, workers compensation benefits are to be determined as if this were an accidental injury rather than an occupational disease. The toxic exposure arose out of and in the course of employment as it occurred toward the end of decedent's shift when claimant was working behind large tanks containing chemicals. More likely than not, claimant sustained toxic

exposure to vapors of chromic acid emanating from a tank with a defective ventilation fan.

Respondent, insurance carrier, and the Workers Compensation Fund argued that decedent died either as a result of a fatal asthma attack or a spontaneous pneumothorax, and contend neither cause was related to decedent's employment in any manner. Because of the findings of the emergency medical personnel, the Appeals Board finds claimant died as a result of a fatal asthma attack triggered by the toxic exposure. When considering the record as a whole, the evidence fails to establish that death was caused by spontaneous pneumothorax, or collapsed lung. The Appeals Board disagrees with respondent's contention the fatal asthma attack was not related to the decedent's employment as the testimony of Doctors Houston and Hammersley is persuasive the acute asthmatic reaction was the result of exposure to a potent irritant at work.

The findings of the Special Administrative Law Judge are adopted and incorporated herein by reference to the extent they are not inconsistent with the findings expressly made above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated April 18, 1994, is modified as follows:

AN AWARD OF COMPENSATION IS HEREBY ENTERED IN FAVOR OF THE claimant, Elizabeth A. (Cauley) Fox, as surviving spouse, and Jessica and Alex Cauley, minor dependents, and against the respondent, Boeing Military Airplane Company, and the insurance carrier, Aetna Casualty & Surety Company, and the Kansas Workers Compensation Fund, for an accidental injury which occurred on February 5, 1988, and based on an average weekly wage of \$575.60, for compensation at the rate of \$256.00 per week from February 5, 1988, to be paid one-half to Elizabeth A. (Cauley) Fox, surviving spouse, and one-half divided between the conservator of the minor dependents until the date of remarriage of the surviving spouse on September 1, 1991. From September 1, 1991, and thereafter, compensation shall be paid at the rate of \$256.00 per week, one-half to the conservator of Jessica Cauley and one-half to the conservator of Alex Cauley, all in accordance with K.S.A. 1987 Supp. 44-510b. The Workers Compensation Fund is ordered to reimburse respondent and the insurance carrier one-half of all compensation, medical expense and other costs associated with this proceeding. Also, because of her remarriage, Elizabeth A. (Cauley) Fox is to be paid in a lump sum amount the equivalent of one-hundred (100) weeks of benefits at \$128.00 per week, or \$12,800.00. No payments shall be made to or on behalf of the minor children until such time as a court of competent jurisdiction has appointed their conservator(s).

For the period from February 5, 1988 through September 1, 1991, Elizabeth A. (Cauley) Fox is entitled to \$128.00 per week for 186.29 weeks, or \$23,845.12, plus a lump sum equal to 100 weeks at \$128.00 per week or \$12,800.00, for a total due and owing of \$36,645.12.

For the period from February 5, 1988 through September 1, 1991, Jessica Cauley is entitled to 186.29 weeks at the rate of \$64.00 per week, or \$11,922.56, followed by payment for the period of September 2, 1991, through December 25, 1994, of 173 weeks

at the rate of \$128.00 per week, or \$22,144.00, for a total due and owing in one lump sum of \$34,066.56, to be paid to a court-appointed conservator on behalf of Jessica.

For the period from February 5, 1988 through September 1, 1991, Alex Cauley is entitled to 186.29 weeks at the rate of \$64.00 per week, or \$11,922.56, followed by payment for the period of September 2, 1991 through December 25, 1994, of 173 weeks at the rate of \$128.00 per week, or \$22,144.00, for a total due and owing in one lump sum of \$34,066.56, to be paid to a court-appointed conservator on behalf of Alex.

Payments to a court-appointed conservator on behalf of Jessica Cauley shall continue at the rate of \$128.00 per week until November 23, 1999, her eighteenth birthday. After November 23, 1999, if Jessica Cauley is enrolled as a full-time student in an accredited institution of higher education or vocational education, or she is not physically or mentally capable of earnings wages in any type of substantial and gainful employment, she will continue to receive compensation at the rate of \$128.00 per week until such enrollment is terminated or she reaches twenty-three years of age, whichever comes first.

Payments to a court-appointed conservator on behalf of Alex Cauley shall continue at the rate of \$128.00 per week until February 6, 2004, his eighteenth birthday. After February 6, 2004, if Alex Cauley is enrolled as a full-time student in an accredited institution of higher education or vocational education, or he is not physically or mentally capable of earning wages in any type of substantial and gainful employment, he will continue to receive compensation at the rate of \$128.00 per week until such enrollment is terminated or he reaches twenty-three years of age, whichever occurs first.

Notwithstanding other language to the contrary, the maximum amount of compensation payable to decedent's surviving spouse and children shall not exceed \$200,000 and when such total amount has been paid the liability of the employer for any further compensation under K.S.A. 1988 Supp. 44-510b to dependents, other than minor children of the decedent, shall cease, except that the payment of compensation to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated and shall not be subject to termination until such child becomes eighteen years of age.

If either Jessica Cauley or Alex Cauley becomes ineligible to receive their share of benefits, the other will receive the full \$256.00 per week up until such time he or she is ineligible, all in accordance with K.S.A. 1987 Supp. 44-510b.

The respondent and insurance carrier are ordered to pay or reimburse claimants the sum of \$3,200.00 for funeral expenses and the sum of \$1,146.77 for medical expense incurred at St. Francis Regional Medical Center.

The remaining orders of the Special Administrative Law Judge contained in the Award of April 18, 1994, are adopted and incorporated herein by reference to the extent they are not inconsistent with the orders of the Appeals Board set forth above.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed one-half to the respondent and one-half to the Kansas Workers Compensation Fund to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Barber & Associates Transcript of Regular Hearing (3-31-93)	\$ 86.75
Deposition Services Transcript of Regular Hearing (5-26-93)	Unknown
Ireland & Barber Deposition of Kenneth R. Barkley	\$135.40
Deposition of Paul Esposito	\$136.90
Deposition of Danny Alan Miller	\$214.80
Deposition of Jinx Leroy Culp	\$135.05
Deposition of Joel A. Hunt	\$145.80
Deposition of Karl E. Becker, M.D.	Unknown
Deposition of David Crane, M.D.	\$118.60
Deposition of Dean Youngblood, M.D.	\$300.00
Cochran, Pudlo & Kozlowski Deposition of Thomas Price Houston, M.D.	Unknown
Ammons Court Reporting Deposition of Jeffrey R. Hammersley, M.D.	Unknown

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Frederick L. Haag, Wichita, KS
Charles W. Harris, Wichita, KS

Scott J. Mann, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director